

CHAPTER 8.

LESSORS AND LEASE FACILITATORS

8.1 Definitions. In 1995 the regulation of Lessors and Lease Facilitators was begun as a new program under the administration of the MVD. Rules specifically for the leasing of motor vehicles were promulgated in November, 1995. These rules are found in the Texas Administrative Code, at 43 TAC §§215.171-215.181. The following definitions come from these regulations.

a. Motor Vehicle Lease. A lease means the transfer of the right to possession of a use of a motor vehicle for a term in excess of 180 days, in return for consideration. This does not include those rental companies who rent vehicles for less than 180 days.

b. Lessor. A lessor is a person who owns a vehicle pursuant to the terms of a lease and transfers to another person the right to possession and use of a motor vehicle titled in the name of the lessor.

c. Lease Facilitator. A lease facilitator is a person, other than a franchised dealer or a bona fide employee of a dealer, or a vehicle lessor or a bona fide employee of a vehicle lessor, who solicits a person to enter into a lease for a motor vehicle. The vehicle is not, and will not be, titled or registered in the name of the lease facilitator.

8.2 License Required. Any person who engages in the business of leasing motor vehicles as a lessor or lease facilitator must be licensed by the Motor Vehicle Division unless otherwise exempt by law. The law does not require a separate license for each individual employee of a lessor or lease facilitator. A lessor license includes the right to facilitate leases for the lessor's own business and a separate lease facilitator license is not needed for a lessor unless the lessor intends to facilitate leases for other lessors.

8.3 License Exemptions. The following persons are not required to obtain a lessor or lease facilitator license:

- a state or federally chartered financial institution;
- a regulated subsidiary of a state or federally chartered financial institution;
- a trust or other entity that owns an interest in a lease that was initiated, managed, serviced, and administered by a licensed lessor;
- a franchised dealer who is leasing those vehicles he is licensed to sell.

8.4 "Lease" or "Leasing" in Name of Company. The terms "lease" or "leasing" or any variation of those words cannot be used in a person's business name, unless that person qualifies as a leasing company and is licensed as a lessor or lease facilitator or is otherwise exempt from the licensing requirement as set out in section 8.3 above. If a person has these terms in their business name because they are engaged in the business of leasing something other than motor vehicles (e.g. equipment, furniture, etc.), then they must obtain an assumed name without these terms in order to receive a dealer license.

8.5 Application for a Lessor or Lease Facilitator License. The application for a lessor or lease facilitator's license must be on the form prescribed by the Motor Vehicle Division. A complete license application packet may be obtained by calling, or emailing the MVD, or going to the DMV website and requesting the proper application. Care should be taken to fill out all blanks and submit the application with the proper supporting documents which include:

- Any letters of appointment a lessor has issued to lease facilitators. If the application is for a lease facilitator, they should include any and all letters of appointment they have received from each lessor;
- a verification that each owner and officer of the applicant required to be listed on the application has not been convicted of any felony;
- the proper fee for each type of license required;
- photographs clearly depicting the overall appearance of the interior and exterior of the applicant's office;
- verification of all assumed name(s) by submitting copies of the assumed name certificate(s) that are on file with the appropriate recording entity such as the Secretary of State or county clerk;
- a verification of the business entity, such as a copy of the Certificate of Incorporation on file with the Secretary of State, or a partnership agreement;
- a sample copy of the motor vehicle lease agreement with a lessee;
- a list of all lessors with names and addresses with which a lease facilitator does business. If the letters of appointment mentioned in number 1 include the names and addresses, those will suffice;
- business background information for each principal or officer of the entity required to be listed on the application;
- a copy of the deed or the lease agreement for the business location showing the names of the lessor and lessee; a legal description of the property or street address; and the period of time for which the lease is valid that should coincide with the same period of time as the license.

8.6 Premises Requirements. A lessor located in Texas or lease facilitator must have a permanent and established place of business from which, in good faith, business is conducted, and records are kept. Requirements for the physical location include:

- A structure of sufficient size to accommodate the business, equipped with a desk and chairs and a working land-based telephone instrument listed in the name under which the lessor or lease facilitator does business;
- If the office is located in a residential structure, the office must be separated completely from and have no direct access into the residential quarters. This home office cannot be used as a part of the living quarters and must be readily accessible to the public without going through the living quarters. Of course, the residential office must comply with all local zoning ordinances and deed restrictions;
- portable-type office structures may qualify, but they must meet the same requirements as above;
- a sign which sets out the business hours the office will be open for business to the public;
- the licensed premises must have a permanent business sign that can be readable by the passing public. The sign should show the name under which the lessor or lease facilitator conducts business. Outdoor signs must contain letters not smaller than six inches in height. A variance in this height rule may be considered if the licensee can show that local zoning requirements limit the sign lettering to less than six inches.
- any lease facilitator must have an established and permanent place of business which is physically located within the state of Texas.
- a lessor or lease facilitator may not office in a financial institution or a dealership unless that lessor or lease facilitator is a bona fide employee of or the leasing business owned by the dealership.
- a one-year lease or deed for the premises.

8.7 Premises Requirements for Out of State Lessors. If a lessor is located outside of this state and the lessor does not deal directly with the public to execute leases, then the physical location is acceptable if each lessor at a business location has a separate desk; a separate land-based telephone listed in their name; and a sign showing the name under which the lessor conducts business that is readable by the general public. A deed or a lease for the business location, continuous for the same period of time as the license and containing the names of the landlord and tenant; a legal description of the property or street address; and the period of time for which the lease is valid.

8.8 Business Hours. Any lessor or lease facilitator within Texas must be open to the public during normal working hours which must be posted at the main entrance of the office. No specific hours are required, but a bona fide employee must be available at that location during the posted business hours to assist customers or representatives of MVD who may wish to inspect records.

8.9 More Than One Location. Lessors are required to obtain a license for their primary location. Lessors must also provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the State of Texas.

If a lessor moves from outside a city limits to inside city limits or from one city to another city, then a new license must be obtained.

A lease facilitator who operates in this state must have a separate license for each business location.

8.10 Records Required to be Kept by Lessors and Lessees. Lessors and lease facilitators are required to keep accurate records on every motor vehicle leased. Licensees are required to cooperate and assist an MVD representative in providing all information requested from the required records. Failure or refusal to cooperate by withholding records or failing to maintain records is subject to a civil penalty or suspension or revocation of the license.

8.11 Inspection of Records. Records are required to be readily available and subject to inspection during regular business hours at the licensed location upon request by a MVD representative. All records need to be kept for each transaction until one year after the expiration of the lease. Records reflecting lease transactions within the preceding 13 months must be kept at the licensed location. Records for prior time periods may be kept off-site at a location within the same county or within 25 miles from the licensed location.

Rather than inspecting records at the licensed location, MVD representatives may request copies of records by certified mail. A licensee must provide those records within 15 days of the certified mail request.

8.12 Content of Records To Be Kept. A lessor or lease facilitator is required to keep the following items in each lease file:

- Names, addresses and telephone numbers of the lessor and lessee in each transaction;
- Names, addresses and telephone numbers of the lease facilitator and/or any employee of the facilitator who handled the transaction;
- Name, address, telephone number and GDN or dealer license number of the dealer selling the vehicle;
- A complete description of the vehicle including VIN, make, model, color, etc.;
- The amount of fee paid by and received by the lease facilitator;
- Copies of all contracts, agreements, or disclosures between the lease facilitator and the consumer;

- Copy of the buyer's order and sales contract wherein the lessor bought the vehicle from the dealer;
- Copy of the front and back of the Manufacturer's Statement/Certificate of Origin or the title of the vehicle involved in the transaction.

8.13 Advertising Records to be Kept. Lessor's and lease facilitator's must maintain copies of all advertisements, brochures, scripts or electronically reproduced copies, in whatever medium appropriate, for 18 months. These records are also subject to inspection by the MVD personnel as required.

8.14 Subject to Advertising Rules. Lessors and lease facilitators are required and expected to adhere to the same advertising rules that motor vehicle dealers adhere to. This includes the MVD Rules and the Federal Trade Commission advertising rules along with any other federal rules involving leases.

8.15 Title Assignments. All certificates of title, manufacturer's certificates of origin or other evidence of ownership for vehicles which have been acquired by a lessor for lease must be properly titled to the lessor by the selling dealer. Only vehicles being sold to a lessor located out of the state would not be titled by the dealer, but the dealer should have the Comptroller's form (Texas Motor Vehicle Sales Tax Exemption Certificate--For Vehicles Taken Out of State) signed and placed in the sales file.

8.16 No Fees From Dealers. Lessors may not directly or indirectly accept a fee from a dealer. This prohibition includes referral fees paid for referring leases or prospective lessees to a dealer but does not include any adjustment in the purchase price for a leased vehicle.

8.17 No Fees to Unlicensed Persons. Lessors may not pay a fee to another person for finding potential lease customers unless that person is a licensed lease facilitator who also has a valid letter of appointment from the lessor that is on file with the MVD. This prohibition on fees does not include any fee paid to a franchised dealer who sells the vehicle or transfers the lease contract to the lessor of the vehicle.

8.18 Referral Fees Prohibited. Lessors and lease facilitators may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.

8.19 Letters of Appointment. Lessors may use non-employees as lease facilitators to represent them as facilitators between the consumer lessees and the lessor. These non-employees must have an appointment in writing which discloses the terms on which the lease facilitator will facilitate leases for the lessor. These letters of appointment must be filed with the MVD. The appointment may be in a letter form. Copies of all letters of appointment issued by the lessor to the lease facilitator should be kept by both the lessor and lease facilitator. The MVD should be sent copies of additional letters of appointment that are issued between the license renewal periods.

8.20 Disclosures in Lease Contracts with Consumer Lessees. If a lease facilitator is responsible for soliciting or producing the consumer for the lessor, then the lessor must disclose in the consumer's lease contract, that a fee was paid or will be paid to the lease facilitator for his or her services. While the amount of the fee is not required to be disclosed, the fact that a fee was paid is required. This disclosure is required to be in a prominent position either on the face of the lease contract or memorandum, or on a separate document that is signed by the lessee at the same time as the signing of the lease contract.

8.21 Lease Cannot Prohibit Foreign Entries. A lease agreement cannot prohibit the lessee from taking the leased vehicle into a specific foreign country unless the lease agreement prohibits the lessee from taking the leased vehicle into all foreign countries.

8.22 Prohibitions on Lease Facilitators. Lease facilitators may be subjected to a civil penalty, or have their license revoked or suspended if they:

- sell or offer to sell a new or used motor vehicle;
- accept a fee from a dealer;
- sign a motor vehicle manufacturer's statement of origin to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new motor vehicle;
- procure or solicit prospective lessees for or on behalf of any person other than a licensed lessor; or
- act in the capacity of or engage in the business of a lease facilitator without a valid license issued by the Motor Vehicle Division and a valid appointment from a lessor to act on behalf of the lessor in soliciting prospective lease clients or customers.

8.23 Prohibitions on Both Lease Facilitators and Lessors. Lessors and lease facilitators will be subjected to sanctions if they:

- fail to maintain an established place of business conforming to the requirements of the Department;
- fail to permit examination of their leasing or advertising records by a representative of MVD;
- fail to notify the MVD of a change of address, name or ownership within ten days after such change;
- fail to remain regularly and actively engaged in the business of leasing or facilitating the leasing of vehicles;

- use or allow the use of a leasing or lease facilitator license for the purpose of avoiding any provisions of the law;
- violate any law relating to the sale, distribution or insuring of motor vehicles;
- fail to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within 10 days of any changes to this list and upon renewal of the license;
- makes a material misrepresentation in any application or other information filed with the MVD;
- violate any state or federal law relating to the leasing of new motor vehicles.

8.24 Lease Facilitator's Fees. A lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor from either the lessor or the lessee, but not from a dealer.

8.25 Appointments of Lease Facilitators. A lease facilitator may accept appointments from more than one lessor. See §8.19.

8.26 Required Lemon Law Notice to Lessees. Lessors and lease facilitators are required to provide notice of the complaint procedures under the Texas Lemon Law to each lessee of a new motor vehicle with whom they transact a lease. See page 11-4 for the form.

8.27 Lessors and GDNs. Lessors do not need a GDN license to sell vehicles which they own, either to the lessee or a duly licensed dealer, either directly or through a licensed wholesale auction. Lessors are not allowed to buy vehicles from an auction with their lessor license. Should a lessor desire to sell their lease vehicles to the general public, they are required to have a GDN and meet all the requirements of premises and records retention that pertain to GDNs.